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4 **UNITED STATES DISTRICT COURT**

5 **DISTRICT OF NEVADA**

6 HOWARD LEE WHITE, )  
7 )  
8 Plaintiff, ) 3:08-cv-00252-RCJ-VPC  
9 vs. )  
10 )  
11 DELMAR SNIDER et al., ) **ORDER**  
12 )  
13 Defendants. )  
14 \_\_\_\_\_ )  
15 )

16 The magistrate judge has granted Plaintiff's motion for the issuance of six blank  
17 subpoenas but has refused to order the U.S. Marshal to locate and serve witnesses or to pay  
18 related fees and costs because Plaintiff does not have leave to proceed *in forma pauperis* in this  
19 Court. (See Mins., May 17, 2010, ECF No. 97). Plaintiff objects to the order.

20 Rule 72(a) permits a district judge to modify or set aside a magistrate judge's non-  
21 dispositive ruling that is clearly erroneous or contrary to law:

22 When a pretrial matter not dispositive of a party's claim or defense is referred  
23 to a magistrate judge to hear and decide, the magistrate judge must promptly conduct  
24 the required proceedings and, when appropriate, issue a written order stating the  
25 decision. A party may serve and file objections to the order within 14 days after  
being served with a copy. A party may not assign as error a defect in the order not  
timely objected to. The district judge in the case must consider timely objections and  
modify or set aside any part of the order that is clearly erroneous or is contrary to  
law.

26 Fed. R. Civ. P. 72(a). Local Rule IB 3-1(a) is the equivalent local rule. "A finding is 'clearly  
27 erroneous' when although there is evidence to support it, the reviewing court on the entire  
28 evidence is left with the definite and firm conviction that a mistake has been committed." *United*

1 *States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948). An order is contrary to law if it misapplies  
2 a statute, rule, or authoritative ruling.

3 The Court denies Plaintiff's objection. Although he has now attached to his objection an  
4 application to proceed *in forma pauperis* and supporting paperwork, the magistrate judge  
5 correctly ruled that unless and until such an application is approved, Plaintiff is not entitled to  
6 avoid fees or to the services of the U.S. Marshal. *See* 28 U.S.C. § 1915. The magistrate judge  
7 also correctly found that Plaintiff had not yet done so in this case.

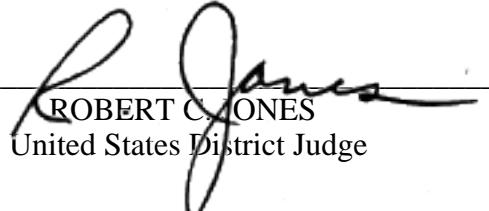
8 **CONCLUSION**

9 IT IS HEREBY ORDERED that the Objection (ECF No. 101) is DENIED.

10 IT IS FURTHER ORDERED that the Clerk shall DETACH and FILE the application to  
11 proceed *in forma pauperis* and supporting paperwork that Plaintiff has attached to the present  
12 motion as a separate motion.

13 IT IS SO ORDERED.

14 Dated this 14<sup>th</sup> day of April, 2011.

15   
ROBERT C. JONES  
16 United States District Judge